

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

February 24, 1998

UNITED STATES OF AMERICA	)	
Complainant,	)	
	)	8 U.S.C. § 1324c Proceeding
v.	)	
	)	OCAHO Case No. 96C00003
	)	
KONSTANTINE VICTOR ANTONOV	)	
Respondent.	)	

ORDER GRANTING MOTION OF STANLEY J. HORN TO WITHDRAW AS COUNSEL

PROCEDURAL HISTORY

This is an action arising under the Immigration and Nationality Act, as amended 8 U.S.C. § 1324c (INA or the Act) in which the United States Department of Justice, Immigration and Naturalization Service (INS) is the complainant and Konstantine Victor Antonov is the respondent. The complaint alleges in Count I that Antonov knowingly forged, counterfeited, altered, falsely made, and possessed two specific documents after November 29, 1990 for the purpose of satisfying a requirement of the Act: 1) a letter of employment on his own behalf dated January 2, 1995 confirming his employment with the Indianapolis Ballroom Company, and 2) a similar letter on behalf of Maria K. Sourovova. Count II alleges that Antonov possessed, used, and attempted to use the first of these forged, counterfeit, altered, and falsely made documents after November 29, 1990 for the purpose of satisfying a requirement of the Act. An answer to the complaint was timely filed. Presently pending is the motion of respondent's counsel, Stanley J. Horn to withdraw, on the grounds that Antonov is now in Russia at an unknown address and has made no attempt to contact Horn since leaving the United States.

On April 4, 1997, I issued an order taking the motion to withdraw under advisement pending counsel's submission of a supplemental statement describing in detail what efforts he had made to contact Antonov, and providing this office with the respondent's last known address. On April 23, 1997, INS filed its opposition to the motion to withdraw, stating that it would be seriously prejudiced by counsel's withdrawal because counsel is the only person authorized to accept service and there is no other means by which effective service on the respondent would be possible. Horn filed his supplemental statement on June 3, 1997, stating that he had obtained Antonov's last known address and forwarded a letter to him at 196070 Bldg. 37 Flat 86, St. Petersburg, Russia, requesting that Antonov contact him. A copy of the letter was attached to the Supplement. No response to the letter was received.

## DISCUSSION

OCAHO rules<sup>1</sup> provide that withdrawal or substitution of an attorney may be permitted by the administrative law judge upon written motion, 28 C.F.R. § 68.33(c), but offer no guidance as to the standards to be applied in deciding when particular circumstances warrant granting leave to withdraw. The basis for the present motion is Horn's claim that Antonov is no longer in the country, that he did not respond to Horn's letter, and that he has made no attempt to contact his counsel.

Prior OCAHO case law has denied motions to withdraw in cases when the attorney was the only authorized recipient for service. United States v. Midtown Fashion, Inc., 4 OCAHO 657, at 593 (1994), United States v. K & M Fashions, Inc., 3 OCAHO 411, at 160 (1994). However withdrawal has also been granted in cases where the respondent had left the country, or where counsel was otherwise unable to communicate with a client. United States v. Ortiz, 6 OCAHO 904, at 4 (1996),<sup>2</sup> United States v. PanAmerican Supply Co., 5 OCAHO 804, at 656 (1995).

OCAHO rules provide that once service of the complaint has been completed, service of subsequent orders and decisions may be made by mailing to the last known address of an unrepresented party. See 28 C.F.R. §§ 68.3(a)(3) and 68.6(a)(1997). Because service of pleadings other than the complaint is properly made by mailing to the last known address, there is no basis for concluding that service of documents on respondent in the future would be ineffective. In Ortiz, 6 OCAHO 904, at 5, it was held that no useful purpose would be achieved by denying a motion to withdraw where counsel had made reasonable efforts to communicate with the client without success, and provided the last known address for the client. Under those circumstances, it was held that case law, the Rules of Professional Conduct, and common sense dictated that the motion to withdraw should be granted. The same is true here. Counsel's efforts in this case to contact his client have not been very impressive, but coupled with the furnishing of Antonov's last known address they are minimally sufficient to permit withdrawal.

I share INS' concern that the timely resolution of the case will be impeded by allowing withdrawal. However I also recognize that requiring counsel to proceed without any practical ability to consult with his client and without compensation will do nothing to advance timely

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<sup>1</sup> Rules of Practice and Procedure for Administrative Hearings, 28 C.F.R. Pt. 68 (1998).

<sup>2</sup> Citations to OCAHO precedents reprinted in bound Volumes 1 through 5, Administrative Decisions Under Employer Sanctions and Unfair Immigration-Related Practices Laws of the United States, reflect consecutive pagination within those bound volumes; pinpoint citations to those volumes are to the specific pages, seriatim, of the specific entire volume. Pinpoint citations to other OCAHO precedents subsequent to Volume 5, however, are to pages within the original issuances.

resolution either.

The motion to withdraw is granted.

SO ORDERED.

Dated and entered this 24th day of February, 1998.

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Ellen K. Thomas  
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of February, 1998, I have served copies of the foregoing Order Granting Motion of Stanley J. Horn to Withdraw as Counsel on the following parties at the addresses indicated.

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